

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,)	
)	
v.)	1:04cr96 (JCC)
)	
BELKIS DIAZ,)	
)	
Defendant.)	

M E M O R A N D U M O P I N I O N

This matter comes before the Court on request by Defendant to reconsider its decision for re-sentencing. For the following reasons, the Court will deny Defendant's request.

I. Background

During a re-sentencing hearing for Defendant, the issue before the Court was whether the Government can withhold the third-level reduction for the acceptance of responsibility reduction under USSG § 3E1.1 in the event that it simply disagrees with the Court's determination that Defendant was entitled to the reduction. The Court decided then that Application Note 6 to the Guideline clearly addressed the issue, and quoted it verbatim, stating: "Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection(b) may only be granted upon a formal motion by the Government at the time of sentencing." USSG §

3E1.1, comment. (n.6). As a result, the Court did not grant Defendant the additional third-level reduction in her sentence.

II. Analysis

Defendant now asks the Court to revisit this decision, and has provided case law in support of the notion that the Government cannot withhold the third-level reduction only on the grounds that it disagrees with the Court. See *United States v. Richins*, 429 F. Supp. 2d 1259 (D. Utah 2006). In that case, Judge Cassell held that the Government must provide a valid basis for withholding the third-level motion in the event that the Court finds that Defendant timely accepted responsibility and is entitled to a reduction. *Id.* at 1261-62.

In response to this request by Defendant, the Government has provided a significant amount of authority--most persuasive of which is the Tenth Circuit's *United States v. Moreno-Trevino*--binding precedent on the District of Utah and directly at odds with *Richins*. 432 F.3d 1181, 1186-87 (10th Cir. 2005) (affirming government's refusal to move for the third-level in disagreement with the Court's decision). The overwhelming majority of cases clearly bolsters the sentencing decision

made by this Court,¹ and the Court finds no reason to re-visit its previous decision.

III. Conclusion

For the foregoing reasons, Defendant's request to re-visit the Court's holding at sentencing is denied, and Defendant's sentence is affirmed.

January 19, 2007
Alexandria, Virginia

_____/s/_____
James C. Cacheris
UNITED STATES DISTRICT COURT JUDGE

¹ See, e.g., *United States v. Chase*, 466 F.3d 310, 315 (4th Cir. 2006) ("an adjustment under subsection(b) may *only* be granted upon a formal motion by the Government") (quoting USSG § 3E1.1, comment. (n.6)) (emphasis by the Fourth Circuit); *United States v. Sloley*, 464 F.3d 355, 359 (2d Cir. 2006) (Section 3E1.1 "contemplates situations in which a court may find acceptance of responsibility while the government prosecutor may not."); *United States v. Espinoza-Cano*, 465 F.3d 1126, 1145 (9th Cir. 2006).